IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 780 of 1991
With
FIRST APPEAL No. 781 of 1991
With
FIRST APPEAL No. 782 of 1991
With
FIRST APPEAL No. 783 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABULAL POPATLAL - Appellant(s)
Versus
A'BAD MUNICIPAL CORPORATION - Defendant(s)

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Appearance :
MR MB GANDHI for Appellant(s) : 1,
(MR GN DESAI) for Defendant(s) : 1,
MR PRASHANT G DESAI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/08/2006

COMMON ORAL JUDGMENT

As common facts and law arise in this group of first

appeals, they are being disposed of by this common order and judgment.

2. All these appeals are filed by the respective appellants (hereinafter referred to as “the plaintiffs”) challenging the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 21st March, 1991 passed in Civil Suit Nos. 242/86, 243/86, 245/86 and 244/86 in dismissing the said suits.

3. The respective plaintiffs filed the aforesaid suits in the City Civil Court at Ahmedabad against the Ahmedabad Municipal Corporation for a permanent injunction restraining the defendants from removing their tea stalls/lorry. It was averred in the respective plaints that they were having a valid license to run the same and that since many years, they were running their business in Manek Chowk area. It was also further averred in the respective suits that they were paying monthly license fees to the Ahmedabad Municipal Corporation and the defendant was issuing regular receipt thereof. It was also further averred that for the license fees, so paid by them upto 31st March, 1984, they were duly issued the receipts. It was also further averred that the defendant Corporation has also issued a receipt 1980-81 for

acceptance of the deposit of the license fees of Rs.540/- dated 28th March, 1981 and that annual fees of Rs.180/- has also been paid by them for 1980-81 for which the receipt bearing Block No.6 and receipt No.89 dated 24-3-1981, were issued. It was also further averred that they are paying license fees regularly, still however, they were threatened by the officers of the defendant Corporation that their stalls will be removed and therefore, they filed the aforesaid suits for permanent injunction.

4. The aforesaid suits were resisted by the defendant Ahmedabad Municipal Corporation. It was submitted that the plaintiffs have no right to have their stalls at the place, where they were having the stalls/lorry and it amounts to an encroachment on the public street. It was also further submitted that as it amounts to an encroachment on the public street, without giving any opportunity of being heard and without issuing any written notice to them, the defendant can remove the the same under the provisions of the BPMC Act, 1949. It was specifically denied having any license issued in favour of the plaintiffs. It was also averred that the receipts, so produced for payment of license fees is forged and concocted one. No such receipts have been issued by the

Corporation and therefore, it was requested to dismiss the suit.

5. The learned trial Court raised the issues. In all the cases, the plaintiffs examined themselves. On behalf of the Ahmedabad Municipal Corporation, Inspector of the Estate Department of Corporation was examined at Exh-55. The documentary evidences consisted of the receipts of deposit as well as receipts for the license fees. Considering the oral as well as documentary evidence, the learned trial Court held that the plaintiffs are not entitled to any relief of permanent injunction, as they have no right to continue and/or occupy the license and that no such licenses, as alleged to have been issued in favour of the plaintiffs, have been issued and that even the plaintiffs have not produced any licenses. On appreciation of evidence, the learned trial Court has also further held that the receipts produced by the plaintiffs with regard to payment of license fees are forged and concocted one. On appreciation of evidence of the Inspector, Estate Department, Ahmedabad Municipal Corporation, the learned trial Court has held that for the purpose of issuance of the stationary license, the procedure is required to be followed and in the present case, no such procedure was followed and therefore, the

contention on behalf of the plaintiffs that they are issued the license, was not accepted by the learned trial Court and accordingly the learned trial Court dismissed the aforesaid suits. Being aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court, the plaintiffs have preferred the present appeals.

6. Shri Chinmay M Gandhi, learned advocate appearing on behalf of the respective appellants has submitted that the learned trial Court has materially erred in holding that the receipts which were produced by the plaintiffs to show the payment of license fees is concocted one and/or forged one. He has also further submitted that the learned trial Court has further materially erred in holding that no such licenses were issued in favour of the plaintiffs and therefore, it is requested to allow the present appellants.

7. Shri Asthawadi, learned advocate appearing on behalf of the defendant Corporation has submitted that on appreciation of evidence, the learned trial Court has rightly come to the conclusion that the receipts which were produced by the plaintiffs were forged one and fabricated. He has also further submitted that as the licenses were not produced on record, the learned trial

Court has rightly given the finding that no such licenses were issued in favour of the plaintiffs as alleged and therefore, the learned trial Court has rightly dismissed the suits and therefore, it is requested to dismiss the present suits.

8. It is not in dispute that the plaintiffs though claimed to be the license holders of the Corporation, they have not produced any license on record. The plaintiffs have relied upon the receipts to show that license fees were paid. However, it is required to be noted that the amount of license fees which were mentioned in the receipts, was not tallying with the actual license fees. The learned trial Court has also considered the deposition of the witness examined on behalf of the Corporation with regard to the procedure to be followed for issuance of the license. Admittedly, no such procedure was followed in the present case and even otherwise, in absence of any license on record, the learned trial Court has rightly held that the petitioners were not issued any license and therefore, they have no right to continue their business on the public road. On considering the entire evidence on record this Court is in complete agreement with the findings and reasoning of the learned trial Court and the learned trial Court has

rightly refused to issue any permanent injunction as prayed for. In absence of any licenses in favour of the plaintiffs, the plaintiffs have no right to continue to do the business by keeping the lorry/stall stationary on the public road. Under the circumstances, the relief is rightly rejected.

9. For the reasons as stated above, all the appeals fail and the same are accordingly dismissed. No costs. Ad interim relief in each of the appeal, if any, stands vacated forthwith.

(M.R.SHAH,J.)

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